

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18977
[Redacted],)	
)	DECISION
Petitioners.)	
)	
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On August 25, 2005, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income taxes in the amount of \$268 for the period ending December 31, 1998.

The taxpayers filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On June 15, 2005, RevOp received the taxpayers' 1998 Amended Idaho Individual Income Tax Return. The return was submitted for processing and a computer-generated letter was mailed to the taxpayers. The letter advised the taxpayers that the refund shown in the return was being denied because the time to claim the refund had expired.

The taxpayers appealed, and a deficiency notice was mailed to complete the requirements stated in the Idaho Code for processing a protest. The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review, and a letter advising them of their rights regarding their appeal was sent.

Idaho Code § 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes. However, paragraph (e) of that section provides an exception when the claim for credit or refund results from an operating loss carryback. Idaho Code 63-3072 in pertinent parts states:

63-3072. Credits and refunds. -- (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, **a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed.** However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

...

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the period of limitations prescribed in subsection (b) of this section, **the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback.** (Emphasis added.)

The taxable year of the net operating loss is year 2000. The taxpayers had until April 15, 2004, to claim credit or refund of overpaid taxes. The taxpayers did not file the claim for credit or refund until June 15, 2005, when they filed the second amended return.

The taxpayers' preparer wrote the letter of appeal asking for consideration because the taxpayers have previously filed their returns and paid any tax due in a timely manner. Furthermore, she wrote, "Also, at the time the return should have been filed, the tax preparer, [Redacted], was going through divorce proceedings and had not completed the amended return."

Although the taxpayers' preparer was dealing with a personal matter at the end of the extended time allowed by law for the taxpayers to claim the net operating loss carryback, the

taxpayers had a choice of who they hired to prepare their amended return. The matter of the late request for refund or credit is between the taxpayers and their preparer.

Idaho Code § 63-3072 is clear and unequivocal. The language in this section "shall be made . . ." and "shall be that period" is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(b) and (e), cited above, are controlling with respect to the taxpayers' refund claim for tax year 1998.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] that denies the taxpayers a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]
[REDACTED]

Receipt No.
